



LEWIS BRISBOIS BISGAARD & SMITH LLP

MEMO ENDORSED

May 21, 2024

VIA ECF

Hon. Edgardo Ramos, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Simi Bhutani
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The Court is in receipt of both parties' letters. Docs. 151, 153. Neor's motion to compel, Doc. 151, is denied. Acacia is directed to provide the identities of the 15 plaintiffs they wish to depose and to propose deposition dates by 5/31/24. The parties are directed to meet and confer regarding scheduling the Lopez deposition. SO ORDERED.



Edgardo Ramos, U.S.D.J.
Dated: 5/22/24
New York, New York

Re: Neor, et ano. v. Acacia Network, Inc., et. al.
No. 22-cv-04814 (ER)

Dear Judge Ramos:

On behalf of Defendants Acacia Network, Inc., Acacia Network Housing, Inc. and Promesa Residential Health Facility, Inc., this letter responds to Plaintiffs' May 16, 2024 motion to compel Defendants to identify and propose deposition dates for 15 opt-in plaintiffs. (Dkt. No. 151).

Plaintiffs' motion is premature because the parties did not meet and confer regarding this topic. In fact, the parties' conference to discuss discovery issues is scheduled later this week, on Friday May 24. This is merely the latest instance in which Mr. Lee has rushed to raise an issue with Your Honor despite not having met and conferred in good faith as the rules require.

As Your Honor will recall, on May 8, the parties appeared for a status conference to discuss various discovery issues that had arisen with respect to depositions. Your Honor permitted Defendants to depose 15 opt-in plaintiffs within three months, that is, by August 8. We have been conferring with our clients regarding the selection of the deponents; however, given that the opt-in plaintiffs worked across over 20 worksites, Defendants are still determining which opt-in plaintiffs to depose and coordinating dates internally. Defendants expect to identify the deponents and propose dates within ten days (May 31), which will render this issue moot. Further, Mr. Lee's letter motion stated that he will be "unavailable for most of July." That effectively shortens Defendants' time to complete depositions from three months to two months, which is incongruent with Your Honor's Order. Notably, Mr. Lee failed to advise Defendants and the Court of his month-long unavailability during the May 8 status conference. Further, even if Mr. Lee is unavailable in July, there are presumably other attorneys employed by his law firm who could cover the depositions if necessary. Defendants have no intention of delaying the scheduling of the depositions that we ourselves requested, but it is understandable given the foregoing that we need additional time to select the deponents and

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coordinate dates.

We also note that, despite our follow-up, Plaintiffs have failed to provide a deposition date for Angelina Lopez, the opt-in plaintiff who submitted a declaration in support of Plaintiffs' Motion for Conditional Certification, but then failed to appear for her noticed deposition on May 6, 2024. We discussed Ms. Lopez's failure to appear for her deposition at the May 8 conference and requested that she be barred from participating in this lawsuit and that her declaration be disregarded. Your Honor denied our request, but advised that appropriate sanctions would be considered if this pattern continued. We request that Plaintiffs be compelled to provide dates for Ms. Lopez's deposition by May 28, 2024, and that she be dismissed from this action and her declaration deemed retracted if Plaintiffs fail to do so.

We thank the Court for its time and attention to this matter.

Respectfully,

/s/ Simi Bhutani

Simi Bhutani of
LEWIS BRISBOIS BISGAARD & SMITH LLP

cc: All counsel of record (via ECF)